

REMARKS

Claims 29-43 are currently pending. In the Office Action, the Examiner made the following rejections:

- I. Claims 29, 30-31, 34-36, 38, 40, 41, and 43 were rejected under 35 U.S.C. § 102(e) as being anticipated by Cottenceau et al. (USP 5,897,589);
- II. Claims 29, 30, 34, and 36-41 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chevillon et al. (USP 6,248,116);
- III. Claims 32, 33, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cottenceau et al. '589; and
- IV. Claim 37 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cottenceau et al. '589 in view of Chevillon et al. '116.

Applicant respectfully submits that none of the foregoing rejections is supported by the Cottenceau et al. patent, and that the Chevillon patent is not a valid prior art reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the claim rejections, and allowance of all pending claims.

Turning first to the Cottenceau et al. patent, that patent describes a prosthesis including a frame (1), a flexible sleeve (54), and a flexible thread (57). (Col. 3, ll. 62-65). The thread (57) attaches the frame (1) to the flexible sleeve (54). Significantly, the manner of attachment is such that the frame is not slidable relative to the sleeve, as explained in the following excerpt from the patent:

The invention provides a prosthesis in which the attachment of the sleeve to the frame is more secure and *will not allow the sleeve to float*, regardless of whether the sleeve is inside or outside the frame. To accomplish optimal securing of the sleeve to the frame, a prosthesis according to the invention has a frame with several tubular sections and/or several winding levels, and a flexible thread extends successively along at least two structural segments belonging to two of the several winding levels and/or to two of the staggered tubular sections.

(Col. 2, line 2 to col. 3, line 4) (emphasis added). This feature of the prosthesis described in the Cottenceau et al. patent is said to prevent “the apices of the meanders of the structure [from] projection or poking outward when the structure is curved.” (Col. 3, ll. 10-14).

On the other hand, claim 29 of the present application recites a tubular graft having a wall, one or more support elements attached to the tubular graft, and

a set of first fasteners attached to respective first wall regions of the tubular graft, each first fastener slidably securing one or more support elements thereto, whereby the support elements slidably secured by each first fastener may slide axially with respect to the respective first wall region.

The foregoing recitation limits the claimed stent-graft to one in which the support elements are allowed to slide axially relative to the tubular graft. This feature is not described in the Cottenceau et al. patent, which in fact teaches that the frame is attached to the sleeve in a manner such that the frame and sleeve do not move independently. Accordingly, Applicant respectfully request withdrawal of the claim rejections based upon the Cottenceau patent.

Applicant has considered the following of the Examiner’s statements contained in the

Office Action:

The introductory statement of intended use and all other functional statements, for example, “slidably securing” and “may slide axially” have been carefully considered but are deemed not to impose any structural limitations on the claims

distinguishable over the Cottenceau et al.'s device which is capable of being used as claimed if one desires to do so.

To begin with, the recitation in claim 29 of "each first fastener slidably securing one or more support elements" to the tubular graft is not a mere "functional statement." Instead, it is a recitation describing the manner in which the fastener secures the support element to the tubular graft and the result of doing so. It is a material limitation that cannot be ignored. Secondly, Cottenceau et al.'s device is not "capable of being used as claimed" unless the device is changed in such a way that it would no longer be "Cottenceau et al.'s device," which explicitly requires firm fixation of the frame to the sleeve. In either event, the Examiner's stated basis for ignoring these claim limitations is without support, and cannot be maintained.

Some of the other characterizations of the Cottenceau et al. patent made by the Examiner and relied upon for other claim rejections are not supportable. For example, in relation to claims 30 and 31, the Examiner appears to suggest that the Cottenceau et al. patent describes "two coil sheet stents attached at the proximal and distal end of the graft." Applicant discerns no such teaching in the Cottenceau et al. patent, and requests further clarification or withdrawal of this basis for rejection of the claims. Additionally, in relation to claims 34 and 35, the Examiner suggests that it is "inherent that the two axial segments independently slide axially with respect to the respective wall region." The Examiner identifies nothing from the Cottenceau patent that would support this contention, whereas the quoted section excerpted above, (col. 2, line 2 to col. 3, line 4), directly contradicts it. This basis for rejecting these claims should therefore be withdrawn.

Based upon the foregoing, the Examiner's rejections of claims under each of § 102(e) and § 103(a) based upon the Cottenceau et al. patent must be withdrawn, and the claims allowed.

Turning next to the Chevillon et al. patent, that patent has an effective § 102(e) date of October 20, 1999. That date is long after the priority date to which the present claims are entitled, which is no later than April 9, 1999. Accordingly, the Chevillon et al. patent is not a proper reference under § 102(e) or, for that matter, under § 103(a). All of the claim rejections based upon the Chevillon et al. patent must also be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that the claims previously presented in this application define patentable subject matter. Accordingly, Applicant respectfully requests withdrawal of the pending claim rejections and allowance of the claims.

The Commissioner is authorized to charge any fee which may be required in connection with this paper to deposit account No. 15-0665.

Respectfully submitted,
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